

REMARKS

This is in full and timely response to the final Office Action mailed October 23, 1997. Entry of the foregoing amendments and reconsideration of the final rejections are respectfully requested under 37 CFR 1.116.

By the foregoing amendment, the drawings and specification have been amended to cancel all of the "new matter" objected to by the Examiner. Specifically, Fig. 5 has been canceled to avoid the new matter objection stated by the Examiner on page 2, paragraph 1, of the final Office Action. It is noted that approval for the cancellation of Fig. 5 was previously requested by the Applicants in a Letter to the Official Draftsperson filed on May 20, 1997.

The specification was also amended by canceling the sentence, "Fig. 5 is an enlarged view of a central part of the flywheel assembly shown in Fig. 3," in column 3, line 43; and by canceling the sentence, "The inner portion 2f of the elastic plate 2 is surrounded by the outer portion 2b of the elastic plate 2," at the end of the paragraph beginning at column 3, line 52. Both of these sentences were added in earlier amendments in this reissue application and do not appear in the issued patent. Moreover, none of the pending claims in this reissue application rely on the content of these canceled sentences for support or antecedent basis.

In view of these amendments to the specification and drawings, the Examiner's new matter objections have been obviated. Accordingly, it is respectfully requested that the Examiner withdraw all of the objections based on new matter under 35 U.S.C. 132.

Claims 1 to 12, 16, 28 and 31 remain pending in this application. Claims 13 to 15, 17 to 27, 29, 30, and 32 to 42 were canceled in previous amendments. The only remaining rejection of the pending claims 1 to 12, 16, 28 and 31 made by the Examiner in the final Office Action is based on the Examiner's contention that the Applicants' reissue declarations are defective. To the extent that this rejection might still be maintained by the Examiner, it is respectfully traversed for the following reasons.

The final Office Action was mailed on October 23, 1997. The Patent & Trademark Office amended its rules governing reissue declarations after the final Office Action was mailed, effective December 1, 1997 (see 37 CFR 1.175; 62 Fed. Reg. 53131; 1203 Off. Gaz. Pat. Office 63). It is respectfully submitted that all of the Examiner's objections to the reissue declarations in this application are moot in view of the new amended rules.

Under the amended rules, it is no longer necessary to particularly and distinctly specify all errors being corrected in the issued patent. Instead, it is now only necessary to identify at least one error in the original patent that serves as the basis for reissue (see 37 CFR 1.175(a)(1)). This requirement has been clearly met by the Applicants in the original Reissue

Declaration filed on April 9, 1996, and in the Supplemental Reissue Declaration filed on March 17, 1997.

For example, the declarations clearly state that the nature of at least one error supporting the reissue is the Applicants claiming less than they had a right to claim (see, e.g., paragraphs 7, 9, and 10 of the Reissue Declaration filed on April 9, 1996). The declarations also describe with particularity the details surrounding the Applicants' representatives' error in understanding the full scope of the Applicants' invention, which led to the Applicants' claiming less than they had a right to claim (see, e.g., paragraphs 15 through 25 of the Reissue Declaration filed on April 9, 1996). Finally, the specific error in the issued patent was described with particularity in the reissue declarations as being, for example, certain excessive limitations found in the last paragraph of independent claims 1 and 8 of the patent (see, e.g., paragraph 26 of the Reissue Declaration filed on April 9, 1996). No further explanation or description of the errors relied upon is believed to be necessary under the amended rule 37 CFR 1.175.

The Applicants have further described the errors relied upon for this reissue application by referring to Figs. A and B, which were attached to the Reissue Declaration filed on April 9, 1996, and the Supplemental Reissue Declaration filed on March 17, 1997. Figs. A and B were provided by the Applicants merely to clarify that certain novel features of the originally disclosed invention can be used in other arrangements than those disclosed in the original application. The error in the issued patent was that these certain features of the

invention, which were disclosed in the original application, were not sufficiently claimed due to both an excess and an insufficiency in the patented claims. It is respectfully submitted that such errors can be, and have been, corrected by reissue under 35 U.S.C. 251 (see, e.g., Mentor Corp. v. Coloplast, Inc., 998 F.2d 992, 27 USPQ2d 1521 (Fed. Cir. 1993); and In re Amos, 953 F.2d 613, 21 USPQ2d 1271 (Fed. Cir. 1991)).

With regard to the Examiner's other objections to the reissue declarations, as set forth in paragraph 7 of the final Office Action, it is respectfully submitted that the amended rules have eliminated the requirement that the Applicants describe how the errors relied upon arose or occurred. The new rule only requires the reissue declaration to include a general statement that the errors being corrected arose without any deceptive intent. Thus, this objection has been rendered moot by the amended rules. A new supplemental declaration will be submitted by the Applicants prior to allowance to state that all errors being corrected, which were not covered by the reissue declarations filed earlier, arose without deceptive intent. 37 CFR 1.175(b)(1).

Accordingly, it is respectfully requested that the Examiner reconsider and withdraw the rejection of claims 1 to 12, 16, 28 and 31 under 35 U.S.C. 251.

For at least these reasons, it is respectfully submitted that this reissue application is now in condition for allowance. Early issuance of a Notice of Allowance is earnestly solicited.

Serial No. 08/629,547  
Docket No. ATS-032/REISSUE

REISSUE APPLICATION

If the Examiner has any questions or comments that could place this application into even better form, he is encouraged to contact the Applicants' undersigned representative at the number listed below.

Respectfully submitted,

Dated: February 23, 1998

  
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